

REMARKS

The Office Action of March 28, 2007 has been reviewed and the comments therein were carefully considered. Claims 1-54 are pending in this application. By this response, claims 3, 4, 7, 21 and 22 have been amended. The amendments are supported by the specification and claims as originally filed and no new subject matter has been added.

Rejections under 35 U.S.C. § 112

Claims 3-4 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. By this response, each of claims 3-4 and 21-22 has been amended to be consistent with the terminology in the independent claims and to specify that the vitamin C component comprises a certain milligram range of triple encapsulated vitamin C component.

Claim 7 has been amended to correct the word “acerbate” to be “ascorbate.”

Rejections under 35 U.S.C. § 103(a)

Claims 1-9, 15, 20-35 and 41-49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aterno et al. (2,811,483) in view of Hansa et al. (6,472,004) in view of the admitted state of the prior art.

Aterno et al. is directed to beadlets of vitamins and nutrients with layers of sugar syrup and layers of plastic or resinous materials (Col. 2, lines 55-60 and 65-69). The Office Action contends on Page 2 that “Aterno et al. disclose that it is known to mix beadlets of vitamins with cereals.” The Applicants respectfully disagree. Aterno et al. discloses only the following with respect to the use of the beadlets:

These beadlets are readily administered both to children and adults by the teaspoon. They are particularly suitable for administration to children by sprinkling the same on breakfast cereals, cakes, confections and, in general, on any food product which is not served in a heated condition or otherwise subjected to excessive heat after application of the beadlets. (Col. 1, lines 46-52 of Aterno)

The term “sprinkle” is not a synonym for “mix”, therefore although Aterno et al. teaches sprinkling, Aterno et al. is silent on mixing the beadlets with any type of food. Furthermore, nowhere does Aterno et al. teach or suggest that the use of the beadlets could result in a shelf-stable oat composition.

Hansa et al. does not remedy the deficiencies of Aterno et al. Hansa et al. is directed to

an oat product with nutrients, for example vitamin C, coated on the oats with a fat-free binder (Col. 4, lines 12-30, col. 9, lines 40-66). The Office Action states on Page 3 that “Hansa et al. disclose an uncooked oat product coated with a nutrient coating, which can be vitamin C.” However, independent claims 1, 15 and 41 are each directed to a mixture of an oatmeal component and a vitamin C component, so an oat product with vitamin C coated on the oats is not relevant to the pending claims. Indeed, Hansa et al. teaches against a mixture, stating that “[t]he resulting product is thus ideally suited for bulk packaging since the coating material will not separate into a separate phase or settle to the bottom of a container.” (Col. 7, lines 1-4 of Hansa et al.) Moreover, Hansa et al. is silent on providing a shelf-stable oatmeal composition and thus does not suggest or motivate one of ordinary skill in the art to use anything other than a fat-free binder with an oat product to incorporate vitamin C in an oatmeal composition. Even if one skilled in the art combined Hansa et al. with Aterno et al., the combination of the beadlets of Aterno et al. with the coated oat product of Hansa et al. would result in beadlets coated onto oats with a binder, not in a shelf-stable oat composition comprising a mixture of an oat component and a vitamin C component as recited independent claims 1, 15 and 41.

The commercial availability of a material does not render its every use obvious, thus the mere availability of TEVC does not remedy the deficiencies of Aterno et al in view of Hansa et al. It would not have been obvious to mix triple encapsulated vitamin C with an oatmeal component, because none of Aterno et al., Hansa et al., nor the known existence of TEVC teach or suggest providing a shelf-stable oatmeal composition comprising a mixture of an oatmeal component with a triple encapsulated vitamin C component. Even if one skilled in the art combined TEVC with Aterno et al. or Hansa et al., the result would be TEVC sprinkled on a food or TEVC coated onto oats with a binder, respectively, not the shelf-stable oat composition mixture as claimed.

Consequently, none of Aterno et al., Hansa et al. or the commercial availability of TEVC, either alone or in combination, teaches or suggests all of the features of independent claims 1, 15 or 41. Claims 2-9, 20-35 and 42-49 depend from claims 1, 15 and 41, respectively, and are patentable over Aterno et al. in view of Hansa et al. and the state of the admitted prior art for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein.

Claims 10-14, 36-40 and 50-54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of JP55045601 and Anderson (2,410,417). JP55045601 discloses that it was known to coat a drug with hardened oil and then ethyl cellulose. Similarly, Anderson discloses that it is known to incorporate vitamins A and E into hard fat before coating with ethyl cellulose. (Col. 7, lines 5-10, Col. 8, lines 1-40) Neither JP55045601 nor Anderson, either alone or in combination, discloses a shelf-stable oat composition mixture or remedies the deficiencies of Aterno et al., Hansa et al. and the state of the admitted prior art with respect to amended claims 1, 15 or 41. Claims 10-14, 36-40 and 50-54 depend from claims 1, 15 and 41, respectively, and are patentable over Aterno et al. in view of Hansa et al. and the state of the admitted prior art and further in view of JP55045601 and Anderson for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein.

Claims 16-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Hansa et al. Claims 16-19 depend from claim 15, which has been discussed in detail with respect to Aterno et al., Hansa et al. and the state of the admitted prior art. The addition of the features in claims 16-19, such as flavorings, binders, inclusion pieces, or all three, does not remedy the deficiencies of the references and claims 16-19 are therefore also patentable over Aterno et al in view of Hansa et al in view of the state of the admitted prior art. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections are respectfully requested.

CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. The Examiner is welcome to contact via telephone the undersigned should it be helpful to facilitate prosecution of the application.

Should there be any other fees due, the Commissioner is hereby authorized to charge any such fees or credit any overpayment of fees to Deposit Account No. 19-0733.

Respectfully submitted,

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Dated: May 9, 2007

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